

1999 PUBLIC ACTS

CHAPTER NO. 415

HOUSE BILL NO. 1245

By Representative Odom

Substituted for: Senate Bill No. 969

By Senator Graves

AN ACT to amend Tennessee Code Annotated, Title 63, Chapter 13, relative to occupational and physical therapy.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, is amended by deleting Section 63-13-102(a) except for subdivisions (1), (2), (7), (8), (9) and (10) which shall remain and be appropriately renumbered, and by adding the following new subdivisions to be appropriately designated:

() "ACOTE" means the Accreditation Council for Occupational Therapy Education, a nationally recognized accrediting agency for professional programs in the field of occupational therapy;

() "AOTA" means the American Occupational Therapy Association;

() "Licensure examination" means the entry-level licensure examination for a registered occupational therapist or the licensure examination for certified occupational therapy assistant, both of which are administered by NBCOT;

() "Certified occupational therapy assistant" (COTA) means an individual who has passed the entry level licensure examination of NBCOT for an occupational therapy assistant or who was licensed as an occupational therapy assistant prior to June 1977 and who is licensed to practice occupational therapy pursuant to this chapter under the supervision of an occupational therapist;

() "NBCOT" means the National Board for Certification in Occupational Therapy, formerly the AOTCB, or American Occupational Therapy Certification Board;

() "Occupational therapist" means a person licensed to practice occupational therapy under this chapter;

() "Occupational therapy" means the screening, evaluation, assessment, planning, implementation and discharge planning of a program of purposeful, meaningful and functional activities with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, environmental deprivation, poverty or cultural difficulties, or the aging process, in order to improve, sustain, or restore the highest level of independence possible for the individual. The practice of occupational therapy includes, but is not limited to:

(A) The evaluation and provision of treatment in consultation with the individual, family and other appropriate persons;

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(B) Selection and administration of standardized and nonstandardized tests and measurements;

(C) The interpretation of assessments in relation to performance areas and performance components;

(D) Selection and teaching of selected life tasks and activities in the performance areas of: activities of daily living, work and productive activities, and play or leisure;

(E) The grading and adapting of purposeful activity for therapeutic intervention;

(F) Development, improvement, retention, and restoration of sensorimotor, cognitive, and psychosocial performance components;

(G) Consideration of the performance contexts in which the individual must perform, including the temporal and environmental aspects;

(H) Fostering of prevention, health maintenance, and safety programs, including family or caretaker training;

(I) Reevaluation for effect of occupational therapy intervention and need for continued or changed treatment;

(J) Termination of occupational therapy services including determination of discharge, summary of occupational therapy outcome, and appropriate recommendations and referrals to maximize treatment gains;

(K) Management of occupational therapy services including the planning, organizing, staffing, coordinating, directing, or controlling of individuals and organizations; and

(L) Administration, interpretation and application of research to occupational services.

Occupational therapy services may encompass evaluation of need and the design, development, adaptation, application and training in the use of assistive technology devices; the design, fabrication, or application of rehabilitative technology such as selective orthotic devices; training in the use of orthotic or prosthetic devices; the application of physical agent modalities as an adjunct to or in preparation for purposeful activity with proper training; the application of ergonomic principles; the adaptation of environments and processes to enhance functional performance; or the promotion of health and wellness. Occupational therapy services may be provided in many settings including, but not limited to, hospitals, nursing homes, mental health facilities, industrial settings, community programs, community services, home health, outpatient rehabilitation facilities, and schools. Additionally, occupational therapists may be certified in areas of specialization such as, but not limited to, hand therapy,

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neurodevelopmental treatment, sensory integration, pediatrics, and neurorehabilitation through programs approved by the AOTA or other nationally recognized organizations;

() "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist;

() "Occupational therapy technician" means a person who assists in the practice of occupational therapy under the direct supervision of a licensed occupational therapist or a licensed occupational therapy assistant, and whose activities do not require professional or advance training in the basic anatomical, biological, psychological and social sciences involved in the practice of occupational therapy;

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 13, is amended by deleting in its entirety Part 2, entitled "Certification of Occupational Therapists and Assistants", and by substituting instead the following language as a new Part 2:

Section 63-13-201. (a) This part is enacted to:

- (1) Safeguard the public health, safety and welfare;
- (2) Protect the public from being misled by incompetent, unscrupulous and unauthorized persons;
- (3) Assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and
- (4) Assure that the available occupational therapy services are of high quality to persons in need of such services.

(b) It is the purpose of this part to provide for the regulation of persons offering occupational therapy services to the public.

Section 63-13-202. (a) An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall file an application showing, to the satisfaction of the committee of occupational therapy, that the applicant:

- (1) Is of good moral character;
- (2) Has successfully completed the academic requirements of an educational program in occupational therapy approved by the committee of occupational therapy, and accredited by the ACOTE in collaboration with the AOTA; or, alternatively, as the case may be, has successfully completed the academic requirements of an educational program for occupational therapy assistants approved by the committee of occupational therapy and the AOTA; and
- (3) Has successfully completed a period of supervised fieldwork experience undertaken in conjunction with the educational program required by subdivision (a)(2) or, alternatively, undertaken in conjunction with the AOTA. Occupational therapist applicants shall have completed at least six (6) months of

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such supervised fieldwork, and occupational therapy assistant applicants shall have completed at least two (2) months of such supervised fieldwork.

(b)

(1) An applicant for licensure as an occupational therapist or as an occupational therapy assistant who meets the requirements of subsection (a) may apply for examination in such manner as the committee of occupational therapy shall prescribe. An application for examination or reexamination shall be accompanied by the appropriate fee.

(2)

(A) Except as specifically provided by this part to the contrary, each applicant for licensure shall take a written examination to test the applicant's knowledge of the basic and clinical sciences relating to occupational therapy, occupational therapy techniques and methods, and such other subjects as the committee may require to determine the applicant's fitness to practice. The committee shall approve an examination for occupational therapists and an examination for occupational therapy assistants and shall establish standards for acceptable performance.

(B) For purposes of testing applicants as required by this part, the committee is authorized to utilize the entry-level national examinations prepared and administered by the NBCOT for occupational therapists and for occupational therapy assistants.

(3) Examinations shall be administered at least twice each year at a time and place and under such supervision as the committee may require. The committee shall give reasonable public notice of examinations.

(4) The committee shall establish policies whereby applicants may obtain their examination scores.

Section 63-13-203. (a) In determining the qualifications of an applicant for licensure as an occupational therapist or as an occupational therapy assistant, only a majority vote of the committee of occupational therapy shall be required.

(b) Licenses and permits issued by the committee shall be granted by the board as provided in section 63-13-104(2).

Section 63-13-204.

(a)

(1) The committee of occupational therapy shall issue a license to any person who meets the requirements of this part upon payment of the appropriate fees.

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(2) Each licensed occupational therapist or occupational therapy assistant shall pay a biennial renewal fee to the board as prescribed in this part, payable in advance, for the ensuing year. The secretary of the board shall notify each licensee.

(3) When any licensee fails to register and pay the biennial registration fee within thirty (30) days after registration becomes due, as provided in this section, the license of such person shall be administratively revoked at the expiration of the thirty (30) days after the registration was required, without further notice or hearing. Any person whose license is automatically revoked, as provided herein, may make application in writing to the committee for the reinstatement of such license and, upon good cause being shown, the committee in its discretion may reinstate such license upon payment of all past-due renewal fees.

(b) For purposes of implementing section 63-13-104(1)(B), the committee shall prescribe and publish nonrefundable fees.

(c)

(1) Notwithstanding any provision of this chapter to the contrary, the division, with the approval of the commissioner, shall establish a system of license renewals at alternative intervals, which will allow for the distribution of the license workload as uniformly as is practicable throughout the calendar year. Licenses issued under the alternative method shall be valid for twenty-four (24) months, and shall expire on the last day of the last month of the license period; however, during a transition period, or at any time thereafter when the board shall determine that the volume of work for any given interval is unduly burdensome or costly, either the licenses or renewals, or both of them, may be issued for terms of not less than six (6) months nor more than eighteen (18) months. The fee imposed for any license under the alternative interval method for a period of other than twenty-four (24) months shall be proportionate to the biennial fee and modified in no other manner, except that the proportional fee shall be rounded off to the nearest quarter of a dollar (25¢).

(2) No renewal application will be accepted after the last day of the month following the license expiration date under the alternative method authorized in this subsection.

Section 63-13-205. A limited permit may be issued by the committee of occupational therapy to an applicant who has successfully completed the educational and experience requirements of this part and who is scheduled for initial examination.

(1) Such permit shall allow the applicant to practice occupational therapy in association with a licensed occupational therapist.

(2) If the applicant fails such examination, the permit shall remain valid only until the results of the examination are available to the committee.

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(3) The permit of an applicant who fails the initial examination and who is scheduled for the next examination may be renewed one (1) time, subject to the limitations contained in this section.

(4) If an applicant passes such examination, the permit shall remain valid until the certificate is granted by the board.

Section 63-13-206. (a) "Supervision of a "COTA" means initial directions and periodic inspection of the service delivery and provisions of relevant in-service training. The supervising licensed occupational therapist shall determine the frequency and nature of the supervision to be provided based on the client's or patient's required level of care and the COTA's caseload, experience and competency.

(b) Supervision of temporary licensees includes initial and periodic inspection or written evaluations, written treatment plans, patient notes and periodic evaluation of performance. The reviews and evaluations must be conducted in person by a licensed occupational therapist.

Section 63-13-207. (a) A licensed occupational therapy practitioner may delegate to unlicensed personnel specific routine tasks associated with nontreatment aspects of occupational therapy services which are neither evaluative, assessive, task selective, or recommending in nature, nor which require decision-making or making occupational therapy entries in official patient records, if the following conditions are met:

(1) The occupational therapy practitioner accepts professional responsibility for the performance of that duty by the personnel to whom it is delegated. In the case of duties delegated by a COTA, both the COTA and the Occupational Therapist Registered (OTR) who supervises the technician will be responsible;

(2) The unlicensed personnel do not perform any duties which require licensure under this act;

(3) The occupational therapy practitioner ensures that the unlicensed personnel have been appropriately trained for the performance of the tasks.

(b) Tasks which may be delegated may include:

(1) Transporting of patients;

(2) Preparing or setting up a work area or equipment;

(3) Routine department maintenance or housekeeping activities;

(4) Taking care of patient's personal needs during treatments; and

(5) Clerical, secretarial or administrative duties.

Section 63-13-208. (a) Nothing in this part shall be construed as preventing or restricting the practice, services or activities of:

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(1) Any person licensed to practice any of the other health-related professions in this State under any other law who is engaging in the practice for which such person is licensed; nor shall it prohibit persons employed as subsidiary workers in approved hospitals, nursing homes, physicians' offices and medical and rehabilitation clinics who do not represent themselves to be licensed occupational therapists or certified occupational therapy assistants from assisting in occupational therapy care of patients under the direction and supervision of a licensed physician, osteopathic physician or licensed occupational therapist;

(2) Any person employed as an occupational therapist or occupational therapy assistant by the government of the United States, if such person provides occupational therapy solely under the direction or control of the organization by which such person is employed;

(3) Any person pursuing a course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program, approved by the committee if:

(A) Such activities and services constitute a part of a supervised course of study; and

(B) Such person is designated by a title which clearly indicates such person's status as a student or trainee;

(4) Any person fulfilling the supervised fieldwork experience requirements of section 63-13-202, if such activities and services constitute a part of the experience necessary to meet the requirements of that section;

(5) Any person performing occupational therapy services in this State, when such services are performed for no more than thirty (30) days in a calendar year and are performed in association with an occupational therapist licensed under this part, provided:

(A) The person is licensed or certified under the law of another state which has licensure requirements at least as stringent as the requirements of this part; or

(B) The person meets the requirements for certification as an OTR or a COTA, established by the AOTA; or

(6) Any person employed as an occupational therapy technician.

(b) Nothing in this part shall prevent certified orthotists from designing, fabricating and fitting orthotic devices.

(c) Nothing in this part shall prevent any person employed by a physician from performing activities related to casting and splinting or teaching exercises related to specific treatment by the employing physician.

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Section 63-13-209. (a) The committee of occupational therapy has the power, and it shall be its duty, to deny, suspend or revoke the license of, or to otherwise lawfully discipline, a licensee whenever the licensee is guilty of violating any of the provisions of this part or is guilty of any of the following acts or offenses:

- (1) Unprofessional, dishonorable or unethical conduct;
- (2) Violation or attempted violation, directly, or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this part or any lawful order of the board issued pursuant thereto, or any criminal statute of the State of Tennessee;
- (3) Making false or misleading statements or representations, being guilty of fraud or deceit in obtaining admission to practice, or being guilty of fraud or deceit in the licensee's practice;
- (4) Gross malpractice, or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of professional practice;
- (5) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances or other drugs or stimulants in such a manner as to adversely affect the person's ability to practice;
- (6) Conviction of a felony, conviction of any offense under state or federal drug laws, or conviction of any offense involving moral turpitude;
- (7) Making or signing in one's professional capacity any certificate that is known to be false at the time one makes or signs such certificate;
- (8) Engaging in practice when mentally or physically unable to safely do so;
- (9) Solicitation by agents or persons generally known as "cappers" or "steerers" of professional patronage or profiting by the acts of those representing themselves to be agents of the licensee;
- (10) Division of fees or agreeing to split or divide fees received for professional services with any person for bringing or referring a patient;
- (11) Conducting practice so as to permit, directly or indirectly, an unlicensed person to perform services or work which, under the provisions of this part, can be done legally only by persons licensed to practice;
- (12) Professional connection or association with any person, firm or corporation in any manner in an effort to avoid and circumvent the provisions of this part, or lending one's name to another for illegal practice;
- (13) Payment or acceptance of commissions, in any form or manner on fees for professional services, references, consultations, pathological reports, prescriptions or on other services or articles supplied to patients;

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(14) Giving of testimonials, directly or indirectly, concerning the supposed virtue of secret therapeutic agents or proprietary preparations, such as remedies, or other articles or materials which are offered to the public, claiming radical cure or prevention of diseases by their use;

(15) Any other unprofessional or unethical conduct which may be specified by the rules duly published and promulgated by the board, or the violation of any provision of this part; or

(16) On behalf of the licensee, the licensee's partner, associate, or any other person affiliated with the licensee or the licensee's facility, use or participate in the use of any form of public communication containing false, fraudulent, misleading or deceptive statement or claim.

(b) In enforcing this section, the committee of occupational therapy shall, upon probable cause, have the authority to compel an applicant or licensee to submit to a mental or physical examination, or both, by a designated committee of at least three (3) practicing physicians, including a psychiatrist, where a question of mental condition is involved. The applicant or licensee may have an independent physical or mental examination, which examination report shall be filed with the committee for consideration. The physicians' committee shall submit a report of its findings to the committee of occupational therapy for use in any hearing that may thereafter ensue.

(c) The committee of occupational therapy on its own motion may cause to be investigated any report indicating that a licensee is or may be in violation of the provisions of this part. Any licensee, any occupational therapist or occupational therapy-related society or association, or any other person who in good faith reports to the committee any information that a licensee is or may be in violation of any provisions of this part shall not be subject to suit for civil damages as a result thereof.

Section 63-13-210. All administrative proceedings for disciplinary action against a licensee under this part shall be conducted by the committee of occupational therapy in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Section 63-13-211. (a) It is unlawful for any person to violate the provisions of this part. It is unlawful for any person who is not licensed under this part as an occupational therapist or an occupational therapy assistant or whose license has been suspended or revoked to use, in connection with the person's name or place of business, the words "occupational therapist," "licensed occupational therapist," "occupational therapist registered," "licensed occupational therapist," "occupational therapy assistant," "certified occupational therapy assistant," "licensed occupational therapy assistant," or the letters "OT", "OTR", "LOT", "COTA", or any other words, letters, abbreviations or insignia indicating or implying that the person is an occupational therapist or an occupational therapy assistant or who in any way, orally, in writing, in print or by sign, directly or by implication, claims to be an occupational therapist or an occupational therapy assistant.

(b) A violation of this part is a Class B misdemeanor.

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Section 63-13-212. No person shall practice occupational therapy or act as an occupational therapy assistant, nor claim to be able to practice occupational therapy or act as an occupational therapy assistant, unless the person holds a license and otherwise complies with the provisions of this part and the rules adopted by the board.

Section 63-13-213. Notwithstanding any provision of this part to the contrary:

(1) The committee of occupational therapy shall issue a license to any person certified prior to July 1, 1984, as an OTR or a COTA by the AOTA. The committee may waive the examination, education or experience requirements and grant a license to any person certified by the AOTA after July 1, 1984, if the committee determines the requirements for such certification are at least as stringent as the requirements for licensure contained in this part;

(2) The committee may waive the examination, education or experience requirements and grant a license to any applicant who presents proof of current licensure or certification as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or territory of the United States, and who possesses, in the committee's opinion, educational and experiential qualifications which exceed those required for certification in this State; and

(3) The committee may issue a license as an occupational therapist to an applicant who has:

(A) Practiced as an occupational therapy assistant for four (4) years;

(B) Completed the requirements of section 63-13-202(a)(3) prior to January 1, 1988; and

(C) Passed the examination for occupational therapists.

Section 63-13-214. Internationally trained occupational therapists and occupational therapy assistants shall satisfy the examination requirements of Section 63-13-202(b). The committee of occupational therapy shall require internationally trained applicants to furnish proof of good moral character and completion of educational and supervised fieldwork requirements, substantially equal to those contained in section 63-13-202, prior to taking the examination.

Section 63-13-215. Any person licensed by the committee of occupational therapy to practice in this State, who has retired or may retire from such practice in this State, shall not be required to register as required by this chapter if such person files with the committee an affidavit on a form to be furnished by the committee, which affidavit shall state the date on which the person retired from such practice and any other facts, as the committee shall consider necessary, that tends to verify such retirement. If such person thereafter reengages in practice in this State, such person shall apply for registration with the committee as provided by this chapter and shall meet

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such continuing education requirements that are established by the committee, except for good and sufficient reasons as determined by the committee.

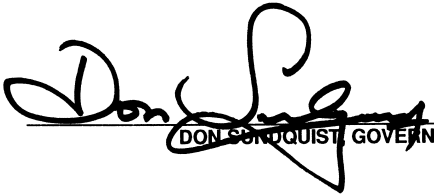
SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 26, 1999


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 17th day of June 1999


DON CONQUIST, GOVERNOR